1861

SUPREME COURT OF THE UNITED STATES.

No. 108.

JOHN BACON AND AL., APPT'S,

vs.

JOHN B. NEVITT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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GIBSON, Print.

JOHN BACON et al.
vs.
JOHN B. NEVITT. } No. 7.—Chancery.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson in said district, on the third Monday of January, in the year of our Lord one thousand eight hundred and fifty-six, which said third Monday of January was the day to which said court was adjourned, by order of said court, made on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-five.

Be it remembered, that heretofore, to wit, on the twenty-eighth day of March, A. D. 1855, John Bacon and Thomas Robins, surviving trustees and assignees of the Bank of the United States, William R. White, John Hooper, Lewis Phœnix, and John D. Beers, stockholders of the late "Commercial Bank of Natchez," by their solicitor, George S. Yerger, filed their bill of complaint herein against John B. Nevitt in the words and figures following, to wit:

Bill of Complaint.

To the Judges of the Circuit Court of the United States for the southern district of the State of Mississippi:

John Bacon and Thomas Robins, surviving trustees and assignees of the Bank of the United States, an institution incorporated by the Legislature of Pennsylvania, William R. White and John Hooper, citizens of the State of Pennsylvania, and Lewis Phœnix and John D. Beers, citizens of the State of New York, stockholders in the late "Commercial Bank of Natchez," who sue in behalf of themselves and all other stockholders of said "Commercial Bank of Natchez" who are citizens of other States than Mississippi, and who shall come in and seek relief by and contribute to the expenses of this suit, bring this their bill against John B. Nevitt, a citizen of the State of Mississippi, residing in Adams county. And thereupon your orators complain, and show that in the year 1836 the Legislature of the State of Mississippi passed an act to incorporate a banking institution, to be established in the city of Natchez, in said State, under the title of the "Commercial Bank of Natchez," with a capital of two million of dollars, to be divided into twenty thousand shares of one hundred dollars each. That said act of incorporation further required the said bank to establish, within six months after the mother bank should go into operation, a branch at Canton, in the county of Madison, with a banking capital of six hundred thousand dollars; a branch at Holmsville, in the county of Pike, with a banking capital of not less than one hundred and fifty thousand dollars; a branch at Shieldsborough, in the county of Han-

cock, with a banking capital of not less than one hundred and fifty thousand dollars, and a branch at Brandon, in the county of Rankin, with a banking capital of not less than one hundred and fifty thousand dollars. And to the end that said branches might be established, the said bank was authorized to increase its capital by a further subscription to the extent of the sum therein allotted to said branches; which act was approved on the 27th day of February, 1836. That shortly after the passage of said act of incorporation, the whole twenty thousand shares of capital stock were subscribed for, upon the terms and in manner prescribed by said act of incorporation; and the said mother bank was duly established and went into operation in the city of Natchez, in accordance with the directions of said charter, and within six months thereafter the four branches were duly established and organized as required by said charter, the said bank having increased its capital by a further subscription of one million and fifty thousand dollars, divided into ten thousand and five hundred shares of one hundred dollars each, thus making the whole capital of said bank three millions and fifty thousand dollars, divided into thirty thousand and five hundred shares. That the said Commercial Bank of Natchez became the proprietors of the money subscribed and paid in by the stockholders, and used the same as a fund for the purpose of issuing notes, receiving deposites, making discounts, and carrying on banking operations and other moneyed transactions authorized by her charter, and for many years thereafter the said Commercial Bank of Natchez continued to transact business, as a bank, to acquire property, contract debts, &c., under the provisions of said charter. That your orators duly became and were stockholders of said bank and owners of shares of the capital stock of said bank, and still are such owners, as follows: Your orators, John Bacon and Thomas Robins, surviving trustees of the Bank of the United States, were and are the owners of four thousand five hundred and eighty-six (4586) shares; William R. White of four hundred and ten (410) shares; John Hooper of two hundred and thirty-nine (239) shares; Lewis Phœnix of seven hundred and forty-five (745) shares, and John D. Beers of three hundred and five (305) shares. On all of which said shares has been paid the sum of one hundred dollars per share, with the exception of three hundred shares owned by your orators, John Bacon and Thomas Robins, surviving trustees, etc., on which the sum of sixty dollars per share has only been paid. And your orators severally hold certificates of stock for the number of shares as above set forth, and have held the same for a long time past, and were the holders thereof long prior to the occurrence of the matters hereinafter set forth.

Your orators further state and show, that, in the year 1843, the legislature of the State of Mississippi passed an act entitled "An act to prescribe the mode of proceeding against incorporated banks for violation of their corporate franchises, and against persons pretending to exercise corporate privileges under acts of incorporation, and for other purposes," which act was approved and became a law on the 26th day of July, 1843; that, under and by virtue of said act, proceedings were

instituted and had in the circuit court of Adams county, in the State of Mississippi, at the suit of the State against the said Commercial Bank of Natchez, by an information in the nature of a *quo warranto* against said bank; which proceedings were so conducted that afterwards, to wit, on the 12th day of June, 1845, by the consideration and judgment of said circuit court of Adams county, the said Commercial Bank of Natchez was forejudged and excluded from further holding or exercising the liberties, privileges, and franchises granted by the said charter. And it was further adjudged, that all the said liberties, privileges, and franchises granted to said bank be seized by said State of Mississippi, and that all the property, books, and assets of said bank be seized and delivered to the trustee thereinafter to be appointed, and that said trustee have execution therefor. And it was further ordered, that William Robertson be appointed trustee to take charge of the assets and books of said "Commercial Bank of Natchez" wherever the same might be found, either in possession of said bank or their officers, agents, trustees, or attorneys; to sue for and collect all debts due to said bank, and to sell and dispose of all property, real or personal, owned by said bank or held by others for its use; and the proceeds of the debts when collected, and of the property when sold, to apply as might thereafter be described by law to the payment of the debts of the said "Commercial Bank of Natchez;" a transcript of which proceedings and judgment will be herewith filed as an exhibit, if required.

And your orators further aver, that said judgment of forfeiture was based wholly and entirely upon a temporary and accidental suspension of specie payment of said bank for a short period of time; that said William Robertson, as trustee as aforesaid under said judgment of forfeiture rendered under said act of the legislature, took possession, on the 20th day of July, 1846, of all the real and personal estate, goods, chattels, effects, and assets, of every name and nature, whether real, personal, or mixed, of and belonging to the said bank and its branches; that said Robertson, trustee, sold a portion of the property, both real and personal, of said bank, and collected a large amount of the debts due to said bank; that with the proceeds of such sales and collections he has paid off and discharged the last of the debts due by said bank, and that there is now no creditor in existence holding any claim against said late bank.

Your orators are informed that the defendants, Philip Hoggatt, Henry Chotard, and John F. Gillespie, are stockholders in said bank, and have an interest in the subject-matter of this suit, and that there are other stockholders of said bank residents of said State of Mississippi, at present unknown to your orators, whose names, when discovered, your orators pray that they may be at liberty to insert herein.

Your orators would further show that the defendant, John B. Nevitt, being largely indebted to the said Commercial Bank of Natchez, did, on the 29th day of January, A. D. 1841, make in writing, signed with his own proper signature, and deliver to said "Commercial Bank of Natchez," his five several promissory notes bearing date the day

aforesaid, and payable to said Commercial Bank or order—the first note for the sum of nine thousand dollars, payable one year after the 27th January, 1841; the second note for the sum of nine thousand and five hundred dollars, payable two years after the 27th January, 1841; the third note for the sum of ten thousand five hundred dollars, due three years after the 27th January, 1841; the fourth note for the sum of eleven thousand five hundred dollars, payable four years after the 27th January, 1841; and the fifth note for the sum of twelve thousand eight hundred and eighty-six $\frac{6}{100}$ dollars, payable five years after the 27th January, 1841—copies of which are hereto annexed, marked Exhibits A, B, C, D, and E, and made part of this bill; that a suit was instituted on said first-described note for nine thousand dollars by said Commercial Bank of Natchez against said John B. Nevitt, and a judgment recovered thereon in the circuit court of Adams county, State of Mississippi, at the November term, 1842, of said circuit court, for nine thousand and six hundred and thirty dollars, in favor of said bank against said Nevitt, besides costs of suit to be taxed, as will appear by reference to the records of said circuit court; a certified copy of which note, and an abstract of said judgment, certified from the records of said circuit court, are hereto annexed and marked Exhibit F, and made part of this bill.

Further show that said defendant, John B. Nevitt, was seized and possessed, and still is in equity of certain tracts of lands and negro slaves, lying and being in said county of Adams, and State aforesaid, and that said defendant did, in order to secure the aforesaid debt to said bank, amounting in all to \$53,386 $\frac{63}{100}$, on said twenty-ninth day of January, 1841, by his certain indenture of mortgage, duly signed and sealed by said defendant, sell and convey to the said "Commercial Bank of Natchez" all the undivided half of said tracts of land, the first being a tract upon which the said defendant then resided, and still resides, called the Claremont tract, containing about three thousand acres, including the other aforesaid and adjacent tracts, and all which are described in said indenture of mortgage, hereinafter made an exhibit to this bill, and which your orators refer to for a description of said mortgaged premises; also the undivided half of the negro slaves, and their natural increase, on said premises, according to the schedule of them annexed to said indenture, being made a part of said indenture, and to which your orators also refer for a description of said negroes; said negro slaves being eighty-seven in number, as stated in said schedule: to have and to hold said premises unto said "Commercial Bank of Natchez," their successors, and assigns; provided, however, if said defendant, his executors, or administrators, shall pay to said bank, their successors, and assigns, the aforesaid debt as mentioned in said five several promissory notes aforesaid, then said presents to be void; and which said debt said defendant covenanted to pay to said bank, their successors, and assigns, on the days limited for the payment thereof, as therein stated, which indenture was on the 28th day of January, 1841, duly acknowledged by said defendant, before a proper and com-

patent officer to take such acknowledgment, and delivered by said defendant to said "Commercial Bank of Natchez;" and which indenture of mortgage was received for record in the office of the clerk of the probate court of Adams county, on the 30th day of January, 1846, and was duly recorded on the fourth day of February, 1846; all which will more fully appear by reference to a certified copy of said deed, and the certificates thereon, which is hereto annexed, marked Exhibit G, and made part of this bill.

And your orators are informed and believe, and accordingly admit, that the defendant paid to said Commercial Bank of Natchez on said note for nine thousand dollars, and the judgment thereon, set forth in exhibit F, the sum of three thousand eight hundred and fifty-five $\frac{13}{100}$ dollars in all, $2,855 $\frac{13}{100}$ having been paid on February 10th, 1844, and $1,000 on the 22d December, 1843, and which constitute the only payments ever made on said debt, as your orators verily believe.

And your orators would further show, that at the time of the rendition of said judgment of forfeiture, and appointment of William Robertson trustee as aforesaid, said promissory notes and judgment against said defendant constituted a portion of the assets of said bank, and the debts due to said bank, which were delivered with said indenture of mortgage to said William Robertson as trustee as aforesaid; that said William Robertson, as trustee as aforesaid, thereupon, on the 5th day of June, A. D. 1847, filed his bill of foreclosure against said John B. Nevitt in the office of the clerk of the southern district chancery court for the southern district of Mississippi, sitting at Natchez, and the said John B. Nevitt appeared and answered thereto, and such proceedings were had in said southern district chancery court for the southern district of Mississippi, that afterwards, on the day of July, 1844, being at the June term, 1854, of said court, it appearing that said William Robertson, trustee, &c., had paid and satisfied all the debts due by said bank, and that his powers and duties as trustee had ceased, and that he had been removed from his said trust, it was ordered and decreed by said court that his said suit should be dismissed, a copy of which decree is hereto annexed, marked Exhibit H, and made part of this bill.

Your orators would further show, that said undivided half of said tract of land and negro slaves, with their natural increase, mortgaged to secure said debt as aforesaid, are but a scanty and insufficient security for the payment of said debt. And your orators are informed and believe, and aver and charge the truth to be, that said mortgaged property, by a full value of it, would not amount to the sum of money due upon said mortgage debt, and that the moneys arising from a sale of said mortgaged property, being said half of said premises, negro slaves, and their increase, at the highest market prices for such property, would not discharge said debt and interest. That the said defendant is in possession and enjoyment of the whole of said premises and negro slaves on said premises, claiming to be the owner of the same, receiv-

ing all the products and annual profits and income thereof, and appropriating the same to his own use, without applying any portion thereof to the payment of said mortgage debt or interest; and your orators will be greatly damnified and deprived of the nett income of said mortgaged property, (which your orators are advised that they are entitled to have applied to the extinguishment of said debt,) unless by the interposition and aid of this court.

Your orators further show, that they do not know, nor have they the means of being informed, whether the whole of the said eighty-seven negro slaves, named in said schedule, are now living and in possession of said defendant on said Claremont plantation or tract of land; but your orators state, that said defendant hath full knowledge and information thereof, and of the persons who may have possession of any of said negroes, if any of them be not in his possession; nor do your orators know, nor have they the means of being informed, what has been the increase or children born of any of said negro slaves, with their names and ages; but your orators state, that said defendant hath full knowledge and information thereof. And your orators allege and state, that the times for the payment of said debt, as expressed in said several promissory notes, have long since elapsed; and said defendant hath been applied to for the payment of the same, but he hath wholly failed to make payment to either the "Commercial Bank of Natchez," except the sum of $3,855 $\frac{1}{100}$ as already stated, or to said said William Robertson, or to your orators and others, stockholders of said bank; by means whereof the said mortgage hath become forfeited at law and absolute in equity.

And your orators had well hoped that said defendant would have paid to your orators and others, stockholders of said late "Commercial Bank of Natchez," said debt and interest. But now, so it is, said defendant sometimes pretends that he hath wholly paid said debt and interest; and at other times, that your orators and others, stockholders of said bank, have no right to sue for, or receive said debt and interest; whereas your orators charge the direct contrary to be the truth; all of which actings and pretences of said defendant are contrary to equity, and tend to the manifest injury of your orators. In tender consideration whereof, and inasmuch as your orators are remediless in and by the strict rules of the common law, and save only in this hon'l court, where matters of this and a like kind are properly relievable.

To the end, therefore, that the said John B. Nevitt may on his corporal oath, true, direct, and perfect answer make, according to the best of his knowledge, information and belief, to all and singular the allegations in this bill, set forth in the same manner as if the same were herein again repeated and he particularly interrogated thereto; and particularly, that the said John B. Nevitt discover and set forth what hath been the natural increase of said negro slaves since the said 29th January, 1841, now living; and that he discover and set forth the names and ages of said increase; and that said defendant discover and set forth, whether he hath in his possession said eighty-seven negro

slaves contained in said schedule attached to said indenture of mortgage, and one-half of which are intended to be mortgaged to said "Commercial Bank of Natchez," and whether said slaves and said increase are in his possession on said Claremont tract of land; and if not, that he discover and show what hath become of them, or any of them, in what place, country and State the same are, and in whose possession, and that an account be taken of the principal and interest moneys that may be due by said defendant upon said mortgaged debt; and that said defendant be decreed to pay to your orators and others, stockholders as aforesaid, at a short day to be therein named, the whole amount of principal and interest that shall be due upon said mortgage debt; and that in default thereof, that the said John B. Nevitt be foreclosed of all equity of redemption in and to said mortgaged premises and negro slaves, with their increase, or in and to said one-half, mortgaged as aforesaid; and that said premises, negro slaves, and their said increase may be divided under a decree of this court, if it shall become necessary in the premises, and that the half thereof, which shall be decreed to be subject to said mortgage, be decreed to be sold according to law and the practice of this court in such cases. And that out of the moneys arising from the sale or sales of said mortgaged property and otherwise collected upon said debt, your orators and others, stockholders of said late "Commercial Bank of Natchez," have decreed to be paid to them in proportion to their amount of stock, said principal debt and all interest moneys that shall be found due by said defendant by reason of the matters and things set forth in this bill, and the costs of this suit to be taxed; and that for any surplus remaining due after said mortgaged property is sold, the said John B. Nevitt be decreed personally to pay the same. And your orators pray, that a receiver may be appointed by the order of this court to take the possession and management of said mortgaged tract of land, negro slaves, and their natural increase, and rent and hire out, or use the same, and account for, and pay into this court the proceeds and nett profits and annual income thereof; and that the moneys arising from the said profits and income be decreed to be paid unto your orators and others, stockholders, &c., towards the discharge of the said principal debt and interest, according to their proportions, and for such other and further relief as may be just and equitable.

Your orators pray for writs of subpœnas, directed, &c., commanding, &c., and they will ever pray, &c.

GEO. S. YERGER, *Sol. for Compl'ts.*

Exhibit A.

$9,000 00. NATCHEZ, *January* 29, 1841.

One year after the 27th day of January, 1841, I promise to pay, without defalcation, to the Commercial Bank of Natchez, or order, at the banking-house in Natchez, for value received, nine thousand dollars.

JOHN B. NEVITT.

Credit first drawer.

Exhibit B.

$9,500. NATCHEZ, *January* 29, 1841.

Two years after the 27th day of January, 1841, I promise to pay, without defalcation, to the Commercial Bank of Natchez, or order, at the banking-house in Natchez, for value received, nine thousand five hundred dollars.

JNO. B. NEVITT.

Credit first drawer.
Secured by mortgage.

Exhibit C.

$10,500. NATCHEZ, *January* 29, 1841.

Three years after 27 January, 1841, I promise to pay, without defalcation, to the Commercial Bank of Natchez, or order, at the banking-house in Natchez, for value received, ten thousand five hundred dollars.

JOHN B. NEVITT.

Credit first drawer.
Secured by mortgage.

Exhibit D.

$11,500. NATCHEZ, *January* 29, 1841.

Four years after the 27th day of January, 1841, I promise to pay, without defalcation, to the Commercial Bank of Natchez, or order, at their banking-house in Natchez, for value received, eleven thousand five hundred dollars.

JOHN B. NEVITT.

Credit first drawer.

Exhibit E.

$12,886 63. NATCHEZ, *January* 29, 1841.

Five years after the 27th day of January, 1841, I promise to pay, without defalcation, to the Commercial Bank of Natchez, or order, at their banking-house in Natchez, for value received, twelve thousand eight hundred and eighty-six $\frac{63}{100}$ dollars.

JOHN B. NEVITT.

Credit first drawer.
Secured by mortgage.

Exhibit F.

THE STATE OF MISSISSIPPI,
Adams County.

COMMERCIAL BANK OF NATCHEZ
vs. } 384.
JOHN B. NEVITT.

Judgment rendered in the circuit court of Adams county, State of Mississippi, in favor of the said plaintiff against the said defendant, on

the fourteenth day of December, A. D. eighteen hundred and forty-two, for the sum of nine thousand six hundred and thirty ($9,630 00) dollars, and all costs.

$9,000. NATCHEZ, *January 29th*, 1841.

One year after the twenty-seventh day of January, 1841, I promise to pay, without defalcation, to the Commercial Bank of Natchez, or order, at their banking-house in Natchez, for value received, nine thousand dollars.

JOHN B. NEVITT.

Credit first drawer.

I, William C. Coffin, clerk of the circuit court of Adams county, and State of Mississippi aforesaid, do hereby certify the above to be a true and correct abstract of the judgment rendered in our said court, in the above stated case, and also a true and perfect copy of the note upon which said judgment was obtained, which was filed in my office on the 12th April, 1842, as the same appears on file and of record in my office in the city of Natchez.

Witness my hand, and the seal of our said court, this 21st day of March, 1855.

[L. S.] WM. C. COFFIN, *Clerk*.

Exhibit G.

This indenture, made the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-one, between John B. Nevitt, of the county of Adams, and State of Mississippi, of the one part, and the Commercial Bank of Natchez, an incorporated institution, doing business in said county and State, of the other part, witnesseth: That the said party of the first part, in consideration of the debt to be secured hereinafter mentioned, and of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth give, grant, bargain, sell, and convey unto the said party of the second part, all that undivided half of the tract of land on which the said party of the first part now resides, called the "Claremont tract," containing about three thousand acres, including the adjacent tracts, to wit: one tract conveyed by the Spanish Government to Palser Shelling, dated 15th April, 1789; also, one other tract, adjoining on the north of the first described tract, conveyed by Lewis Chasauve, by deed dated , and patented to said Shelling; also, one other tract, joining the first named tract on the west, conveyed by Richard Harrison to Palser Shelling by deed dated , and also patented; also, one other tract of land, conveyed by Thomas and Elizabeth Grafton, by deed dated 10th January, 1817; also, one other tract of land, conveyed by Catharine and John Minor to said Nevitt; the undivided half of which five tracts of land above described is intended hereby to be conveyed, and also the one-half of all the negro slaves on said land, supposed to be about one hundred in all,

together with their increase, (a schedule of which negroes are hereunto attached and made a part of this deed,) to have and to hold the said premises, with the appurtenances, unto the said party of the second part, and their successors and assigns, to the only proper use of the said party of the second part, their successors and assigns, forever: Provided, that if the said party of the first part, his executors and administrators, or either of them, do pay, or cause to be paid unto the said parties of the second part, their successors and assigns, the just and full sum of fifty-three thousand and three hundred and thirty-eight $\frac{67}{100}$ dollars, as mentioned in five certain promissory notes, as follows: One made for nine thousand dollars, one other note made for the sum of nine thousand five hundred dollars, one other note made for the sum of ten thousand five hundred dollars, one other note made for the sum of eleven thousand five hundred dollars, and one other note made for the sum of twelve thousand eight hundred and eighty-six $\frac{63}{100}$ dollars, all dated January 29th, 1841, and payable severally in one, two, three, four, and five years after the twenty-seventh day of January, 1841, then these presents to be void; and the said party of the first part doth covenant with the said party of the second part, their successors and assigns, that he, the said party of the first part, his executors, administrators, or assigns, shall and will pay, or cause to be paid to the said party of the second part, their assigns and successors, the sum of fifty-three thousand three hundred and eighty-six $\frac{63}{100}$ dollars, on the days above limited for the payment thereof.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN B. NEVITT. [SEAL.]

Schedule of Negroes.

Margaret, Lewis, Edmond, Poll, Sevelia, Jim, Doly, Priss, Ben, Forest Henson, Tom, Dick, Ary, Bill, Red, Winny, Aggy, Jenny, Eliza, Eli Windsor, Jack, Briscoe, *Jim*, Kitty, Tim, Cinthia, Bill, *Bill*, Jones, Beth, Anthony, Lizzy, Lot, Caroline, Prince, Sarah, Henry, *Bill*, Sam, *Margaret*, Susan, George, Remus, Joe, *Sam*, Adeline, Albert, Elizabeth, Anthony, Phil, Harriet, *Eliza*, Ann, Jeff, *Jim*, Soph, John Tog, Milly, Nance, Charles, Brown, Vive, *Bill*, Dunce, Hannah, Joy, *Charles*, Dilly, Minerva, Monroe, Roneby, Ned, Chesley, Rachel, Juliet, *Ned*, *Dick*, Wood, Phillis, *Alfred*, Jackson, Alton, Clara, Betty, Nelson, *Tom*, Leonard, Jeffrey, Mary, Isaac, Big Mary; in all, eighty-seven negro slaves.

JOHN B. NEVITT.

STATE OF MISSISSIPPI,
Adams county.

Personally appeared before the undersigned, justice of the peace for the county aforesaid, John B. Nevitt, and acknowledged to have signed, sealed, and delivered the foregoing and within instrument of

witnessing on the day and year therein written, and for the purposes therein named.

Given under my hand and seal, this *thirty-eighth* day of January, 1841.

JAMES K. COOK. [J. P. SEAL.]

Received the within and foregoing mortgage into my office, to be recorded, January 30, 1841.

RAL. NORTH, *Cl'k*,
By CHAS. SHELDON, *D. C.*

THE STATE OF MISSISSIPPI,
Adams county.

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify that the foregoing three pages contain a true and perfect transcipt from the record of the original mortgage, as the same now remains on record in my office, in book C. C., pp. 393–'4, of records of deeds.

Given under my hand and the seal of said court at the city [SEAL.] of Natchez, this 22d day of March, A. D. eighteen hundred and fifty-five.

RICH'D A. INGE, *Clerk*,
By HARVEY OFFICER, *D. C.*

Exhibit H.

STATE OF MISSISSIPPI.

In the Vice Chancery Court for the southern district of Mississippi, sitting at Natchez.

WILLIAM ROBERTSON, trustee,
vs.
JOHN B. NEVITT. } 112.

Pleas before the honorable Benjamin C. Buckley, vice chancellor of the State of Mississippi for the southern district, at a southern district chancery court, begun and held at the court-room in the city of Natchez, county of Adams, and State aforesaid, on the fourth Monday in June, in the year of our Lord one thousand eight hundred and fifty-four.

And afterwards, to wit, on the 28th day of June, A. D. 1854, being the June term, 1854, the following order was made and entered of record in this cause, to wit:

WILLIAM ROBERTSON, trustee,
vs.
JOHN B. NEVITT. } In Chancery.

The final decree rendered herein having been reversed by the superior court of chancery, and this cause having been remanded to this court for further proceedings, the defendant suggests, that at the May term, A. D. 1854, of the Adams circuit court, it being shown, to the

satisfaction of said court, that the said complainant, William Robertson, trustee of the Commercial Bank of Natchez, had collected sufficient funds from the assets of said bank to discharge the claims of the creditors of said bank, as well as the costs and expenses incurred in the execution of the trust, it was thereupon ordered and adjudged by said court that said William Robertson, trustee as aforesaid, should thenceforth cease all further collections and all further proceedings to collect any of the remaining debts of said bank from any of the debtors thereof, which said judgment remains in full force and unreversed; the said defendant thereupon moves the court to dismiss this case.

This motion coming on this day to be heard, and the court being now sufficiently advised in the premises, it is ordered, adjudged, and decreed, that the said motion be sustained, and that said bill be dismissed. It is further ordered, adjudged, and decreed, that the said complainant do pay the costs of this cause, to be taxed, &c.

I, E. S. Russell, clerk of the vice chancery court for the southern district of Mississippi, do hereby certify that William Robertson, trustee of the late Commercial Bank of Natchez, filed in my office his bill of foreclosure against John B. Nevitt, on the 5th day of June, 1847, and that the above is a true and perfect copy of the final decree rendered in said cause, as the same now appears of record in my office.

Witness my hand and the seal of our said southern district
[SEAL.] chancery court hereunto affixed, at the city of Natchez, this 21st day of March, A. D. 1855.

E. S. RUSSELL, *Cl'k*,
By RO. W. WOOD, *D. Cl'k*.

Subpœna.

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to John B. Nevitt, greeting:

For certain causes offered before us, in our circuit court for the southern district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our circuit court in and for said district, sitting in chancery, to be held at the town of Jackson, on the first Monday of May next, to answer to a bill of complaint exhibited against you by John Bacon and Thomas Robins, surviving trustees and assignees of the Bank of the United States, William R. White, John Hooper, Lewis Phœnix, and John D. Beers, complainants in our said court; and further to do and receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first
[L. S.] Monday in November, A. D. one thousand eight hundred and fifty-five, and in the 79th year of the independence of the United States.

Issued the 28th day of March, 1855.

W. H. BROWN, *Cl'k*.

The defendant is required to enter his appearance in this suit in the clerk's office, on or before the day to which this writ is returnable, otherwise the bill may be taken pro confesso.

To the Marshal of the southern district of Mississippi, to execute and return:

Marshal's Deputation.

I hereby nominate and appoint Oren Metcalfe my special deputy, to execute and return the within s'pa. according to law.

Witness my hand and seal, this 2nd day of April, A. D. 1855.

RICH'D GRIFFITH, [SEAL.]
U. S. Marshal, &c.

Marshal's Return.

Executed April 4, 1855, on John B. Nevitt, by handing him a copy of this s'pa. in person.

RICHARD GRIFFITH,
U. S. Marshal So. Dis.
By O. METCALFE, *Special Dep. M.*

Demurrer.

United States Circuit Court, southern district of Mississippi.

JOHN BACON et al.
vs.
JOHN B. NEVITT. } 260.—In Chancery.

And the said defendant, by protestation, not confessing the matters charged in the complainant's bill, doth demur in law thereto, and saith that the said bill of the complainant doth not contain any matter of equity to which he should or can be called to answer, and prays the judgment of this honorable court whether he shall be called and required to answer the same, &c.

T. J. WHARTON,
D. C. GLENN,
D. MAYES,
Sols. for Deft.

I do hereby certify, that I am of opinion and do believe that the foregoing demurrer of John B. Nevitt is well taken, and ought to be allowed and sustained.

DAN'L MAYES, *Sol. for Deft.*

John B. Nevitt makes oath that the foregoing demurrer is not filed for the purpose of delay, but because he is informed and believes it ought to be sustained.

JOHN B. NEVITT.

Sworn to and subscribed in open court, May 10, 1855.

W. H. BROWN, *Cl'k.*

Cause Set.

And afterwards, to wit, on the 21st day of January, A. D. 1856, this cause was set for hearing on the demurrer of the defendant to the bill of complaint herein, by consent of solicitors for complainants and defendant.

Final Decree.

THE UNITED STATES OF AMERICA,
Southern District of Mississippi.

Circuit Court—on chancery side of said court, January adjourned term, 1856.

JOHN BACON et al.
vs.
JOHN B. NEVITT.

This cause coming on to be heard at the term aforesaid, and on the 26th day of January, 1856, before his honor, S. J. Gholson, presiding judge, &c., on the demurrer of defendants to the bill of complaint, and the same having been argued by counsel, and the court being now sufficiently advised in the premises, doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed that said demurrer be sustained and the said bill of complaint be dismissed. It is further ordered that the complainants pay the costs, &c., to be taxed.

Ordered, adjudged, and decreed on this the 26th day of January, 1856. S. J. GHOLSON.

Appeal.

From which decision the complainants pray an appeal to the Supreme Court of the United States, which is granted upon their entering into bond with George S. Yerger, esquire, as security in the penalty of two hundred and fifty dollars, conditioned according to law.

Appeal Bond.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sct:

Know all men by these presents, that we, John Bacon, Thomas Robins, William R. White, John Hooper, Lewis Phœnix, John B. Beers, and George S. Yerger, are held and firmly bound unto John B. Nevitt in the just and full sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said John B. Nevitt, his lawful attorney, executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals and dated this 26th day of January, A. D. 1856.

The condition of this obligation is such, that whereas at the November term, A. D. 1855, of the circuit court of the United States for

the southern district of Mississippi, which term of said court was adjourned by order of the honorable Samuel J. Gholson, one of the judges of said court, from the 1st Monday of November, A. D. 1855, until the 3d Monday of January, 1856, held at the city of Jackson in said district, a final decree was rendered by said court sitting in chancery, in favor of the said John B. Nevitt against the said John Bacon, Thomas Robins, William R. White, John Hooper, Lewis Phœnix, and John D. Beers, sustaining the demurrer to the bill of complaint and dismissing the same, with costs of suit.

And whereas the said John Bacon, Thomas Robins, William R. White, John Hooper, Lewis Phœnix, and John D. Beers, have prayed for and obtained an appeal therefrom, to the Supreme Court of the United States, which appeal is granted upon their executing this bond according to law, with the above-named George S. Yerger as surety herein:

Now, if the said John Bacon, Thomas Robins, William R. White, John Hooper, Lewis Phœnix, and John D. Beers, shall prosecute their said appeal to effect, and shall well and truly pay and satisfy the amount of said decree and all such costs as the Supreme Court of the United States shall adjudge in the premises, if they, the said John Bacon, Thomas Robins, William R. White, John Hooper, Lewis Phœnix, and John D. Beers, shall fail to make their plea good, then and in that case this obligation to be void; otherwise to remain in full force and virtue.

Witness—

JOHN BACON, [SEAL.]
By his Att'y, Geo. S. Yerger.
THOMAS ROBINS, [SEAL.]
By his Att'y, Geo. S. Yerger.
WILLIAM R. WHITE, [SEAL.]
By his Att'y, Geo. S. Yerger.
JOHN HOOPER, [SEAL.]
By his Att'y, Geo. S. Yerger.
LEWIS PHŒNIX, [SEAL.]
By his Att'y, Geo. S. Yerger.
JOHN D. BEERS, [SEAL.]
By his Att'y, Geo. S. Yerger.
GEO. S. YERGER, [SEAL.]

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court United States.

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing thirty-one pages contain a full, true, and complete transcript of the record of the decree rendered between the parties